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Comments Due by: **June 1, 2016**

SC REVENUE RULING #16-xx (Draft – 5/03/16)

- SUBJECT:** Nexus Creating Activities for Income Taxes
(Income Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute, unless otherwise stated in the Introduction.
- SUPERSEDES:** SC Revenue Ruling #03-4 and all previous advisory opinions and any oral directives in conflict herewith.
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Introduction:

Nexus is the minimum connection or contact between a taxpayer and a state sufficient to subject the taxpayer to the taxing jurisdiction of a state. The Due Process and Commerce Clauses of the United States Constitution, 15 U.S.C. §381 (Public Law 86-272) and other federal statutes provide limitations on a state's powers to tax out-of-state businesses.

Over the years, courts have provided limitations and guidelines in determining whether certain activities create nexus with a taxing state. For example, see *Quill Corp. v. North Dakota* 504 U.S. 298 (1992), *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), and *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15, 437 S.E.2d 13 (1993) cert. denied 510 U.S. 992 (1993).

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The purpose of this advisory opinion is to update written guidance from the Department concerning nexus creating activities for income tax purposes. For additional information in determining whether Public Law 86-272 protects certain activities from South Carolina taxation see SC Revenue Ruling #97-15.

This document reflects the Department's official position regarding income tax nexus at the time of its issuance. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

Any change in South Carolina's position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change resulting from a court case will apply to all periods open under the statute unless the court states otherwise, and any change resulting from a change in statute or regulation will be applicable as of the effective date established by the General Assembly.

This document covers the following categories:

- A. General Activities
- B. Registration with State Agencies/Departments
- C. Ownership/Leasing of In-State Property
- D. Ownership Interest of In-State Pass-Through Entities
- E. Licensing Intangibles
- F. Employee Activities – Sales Related
- G. Employee Activities – Non-Sales Related
- H. Activities of Unrelated Parties
- I. Distribution and Delivery
- J. Financial Activities/Transactions
- K. Transactions with South Carolina Printers
- L. Cloud Computing or Software as a Service (SaaS) Transactions
- M. Internet-Based Activities

Questions concerning the existence of nexus with South Carolina should be directed to the Department's Nexus/Discovery Section at 803-898-5235 or 803-898-5695.

Qualifications to Responses:

Each response is based upon the specific facts described in the question and the following assumptions:

- Each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina¹; and,

¹Even though some questions specifically state that the activity represents the business's "sole activity" in South Carolina, all other questions also represent the business's sole activity in South Carolina, whether or not such is specifically stated.

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- The activities described are not “de minimis” unless the question or answer specifically states otherwise.

A “yes” response indicates the activity or relationship will, by itself, create nexus with South Carolina. A “no” response indicates the activity or relationship will not, by itself, create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each, by itself, does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

Each response refers only to income tax nexus. Activities that create nexus for income tax purposes differ somewhat from those that create nexus for other tax purposes. Further, the Department did not address the imposition of any license fee, registration or filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce.

References used in preparation of this document include:

1. *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992);
2. SC Revenue Ruling #97-15, an advisory opinion providing guidance for determining whether Public Law 86-272 protects certain activities from South Carolina taxation;
3. SC Revenue Ruling #08-1, an advisory opinion providing examples that show activities or relationships that will not, by themselves, create income tax nexus with South Carolina;
4. SC Private Letter Ruling #94-8, an advisory opinion concluding that a company’s leveraged leases of five aircraft to commercial airlines were *de minimis* when it had three landings in South Carolina and 58,722 landings everywhere for the tax year. Therefore, the company did not have nexus in South Carolina;
5. SC Private Letter Ruling #95-2, an advisory opinion addressing the appropriate sourcing of nonresident limited partners’ income in a limited partnership organized under Delaware law for the purpose of pooling resources in order to maximize investments in stocks, securities, and other intangible assets (including limited partnerships) for its own account. Based upon the facts, the nonresident partnership was not considered to carry on a business in South Carolina since its income was solely from its purchase and sale of property for its own account.² As a result, the income generated by the partnership was not considered South Carolina source income to its nonresident limited partners. Note, the advisory opinion did not address the taxation of the general partner, an S corporation, authorized to do business in South Carolina and maintaining an office in South Carolina;

² See SC Code Section 12-6-1720(1)(c).

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6. SC Commission Decision #92-58, a decision distinguishable from SC Private Letter Ruling #95-2, wherein it was determined that an S corporation incorporated under South Carolina law for the sole purpose of investing in stocks, bonds, real estate, and partnerships was not merely an investment vehicle deriving income solely by reason of the purchase and sale of property for its own account. The S corporation was a business with significant fee income from financial advising, deal making, and financial contracts. As such, the gains from the disposition of intangible assets and the interest income were derived from property connected with the S corporation's business and were apportionable, and the dividend income was allocated to the shareholders' domicile outside of South Carolina; and
7. Specific South Carolina income tax laws cited in the notes, *e.g.*, SC Code Sections 12-6-555 (persons contracting with a commercial printer) and 12-6-4920 (interstate motor carriers required to file).

Caution: Since a thorough review of the facts and circumstances of each taxpayer's situation is required in order to make a nexus determination, additional facts not considered in answering the questions below may change the result.

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A. General Activities

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. The out-of-state corporation is doing business in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation makes sales to customers in South Carolina by means of an 800 telephone order number and advertises in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The out-of-state corporation is listed in the local telephone books of cities in South Carolina. The phone is not answered in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. The out-of-state corporation uses local phone numbers in South Carolina, which are forwarded to the corporation's headquarters located in another state. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. The out-of-state corporation maintains a bank account at a bank located in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. The out-of-state corporation provides one to six days of consulting services in South Carolina during the year. The services are not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The out-of-state corporation, through a third party, provides warranty services on goods sold in South Carolina.
Note: If not <i>de minimis</i> and if the services are conducted on behalf of the out-of-state corporation Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. The out-of-state corporation sends catalogs to residents in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Does South Carolina have a <i>de minimis</i> standard?
Note: South Carolina has a <i>de minimis</i> standard and follows the principles defined by case law. See <i>Wisconsin Department of Revenue v. William Wrigley, Jr., Co.</i> , 505 U.S. 214 (1992), SC Revenue Ruling #97-15, SC Private Letter Ruling #94-8, and SC Code Section 12-6-4920. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. Does South Carolina conform to the Multistate Tax Commission's Nexus Bulletin 95-1 "Computer Company's Provision of In-State Repair Services Creates Nexus?"
Note: South Carolina has not adopted MTC's Nexus Bulletin, but South Carolina generally considers services conducted by a third party to be on behalf of the out-of-state company if that company contracts for or controls the services. | <input type="checkbox"/> | <input type="checkbox"/> |

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B. Registration with State Agencies/Departments

	YES	NO
1. The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in South Carolina as a foreign corporation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. The out-of-state corporation holds a general business license issued by South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The out-of-state corporation holds a specialty license issued by South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The out-of-state corporation is registered with South Carolina as a government vendor or contractor.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C. Ownership/Leasing of In-State Property

	YES	NO
1. The out-of-state corporation owns raw land.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The out-of-state corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year. Note: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under SC Code Section 12-6-555.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The out-of-state corporation ships in-process inventory to an unrelated party in South Carolina solely for processing. Note: Except for processing in connection with a printing contract under SC Code Section 12-6-555.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The out-of-state corporation consigns goods to vendors, independent contractors, or other parties. Note: Except for independent contractors under Public Law 86-272.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The out-of-state corporation owns display racks. Note: Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity under SC Revenue Ruling #97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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- | | | |
|--|-------------------------------------|-------------------------------------|
| 6. The out-of-state corporation owns tooling, molds, dies, etc., located at a manufacturing facility in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The out-of-state corporation leases (as lessor) real estate in South Carolina to an unrelated third party. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. The out-of-state corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in South Carolina five or fewer times per year.
Note: Assuming it is not <i>de minimis</i> . See SC Private Letter Ruling #94-8 where it was concluded that the leasing of airplanes landing in SC three times per year was <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. The out-of-state corporation owns or leases automobiles provided to salespersons. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. The out-of-state corporation owns or leases trucks or automobiles used by non-salespersons. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. The out-of-state corporation owns or leases other machinery or equipment. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. The out-of-state corporation holds title to property located in South Carolina until the contract price has been paid.
Note: Assuming ownership has not passed and that holding title does not serve merely as a security interest. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. The out-of-state corporation files a security interest on inventory sold until the contract price has been paid. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. The out-of-state corporation owns or leases a place for company employees, directors, and officers.
Note: Assuming ownership or long term rental of real property in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

D. Ownership Interest of In-State Pass-Through Entities

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The out-of-state corporation owns an interest in an investment partnership or LLC taxed as a partnership that has operations in South Carolina.
Note: Although the income may not be taxed in SC. See SC Commission Decision #92-58 and SC Private Letter Ruling #95-2. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation owns a general interest in a partnership that is doing business in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 3. The out-of-state corporation owns a limited interest in a partnership that is doing business in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina and is involved in managing the LLC.
Note: Assuming the LLC is taxed as a partnership or S Corporation. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina, but is not the managing member or otherwise involved in managing the LLC.
Note: Assuming the LLC is taxed as a partnership or S Corporation. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The out-of-state corporation owns an interest in an entity located in South Carolina that is disregarded for federal income tax purposes.
Note: Assuming the entity is doing business or owns property in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The out-of-state corporation has an ownership interest or a beneficial interest in a flow-through entity, directly or indirectly through one or more other flow-through entities, that has substantial nexus in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

E. Licensing Intangibles³

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The out-of-state corporation licenses trademarks or trade names to related entities with locations in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation licenses trademarks or trade names to unrelated entities with locations in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. The out-of-state corporation sells/licenses franchises (such as fast-food franchises) to residents of South Carolina.
Note: Assuming this does not mean the sale of an entire business, e.g., not an outright sale of a restaurant and not a sale of all of franchisor's interest in the franchise. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The out-of-state corporation licenses canned software to consumers in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. The out-of-state corporation sells/licenses the right to use a patent or copyright | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

³ See *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).

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to related entities with locations in South Carolina.

- | | | |
|---|-------------------------------------|--------------------------|
| 6. The out-of-state corporation sells/licenses the right to use a patent or copyright to unrelated entities with locations in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|-------------------------------------|--------------------------|

F. Employee Activities – Sales Related

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. Employees, while in South Carolina, accept and approve customer orders. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Employees, while in South Carolina, negotiate prices, subject to approval outside South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Employees, while in South Carolina, investigate credit-worthiness of customers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Employees, while in South Carolina, secure or accept deposits on sales. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Employees, while in South Carolina, handle credit disputes. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Employees, while in South Carolina, attend trade shows or maintain sample/display rooms for one to 14 days per year. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Employees, while in South Carolina, maintain a two-month supply of free samples. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. Employees, while in South Carolina, check customers' inventories for reorder. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. An employee, while in South Carolina, makes a single sale on his own initiative and without the company's prior knowledge. The sale is not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. Employees, while in South Carolina, solicit sales of services in South Carolina one to six days per year.
Note: Unless <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. Employees, while in South Carolina, perform a sales-related function and are reimbursed for the costs of maintaining a home office. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Employees, while in South Carolina, operate mobile stores. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

G. Employee Activities – Non-Sales Related

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. Employees, while in South Carolina, collect delinquent accounts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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2. Employees, while in South Carolina, repossess property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Employees, while in South Carolina, regularly perform installation, repair, maintenance, or warranty services.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Employees, while in South Carolina, perform installation, repair, or warranty services one to four times per year. Note: Unless <i>de minimis</i> .	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Employees, while in South Carolina, set up promotional display of products (e.g., end caps) and inspect inventory. Note: The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.	<input type="checkbox"/>	<input type="checkbox"/>
6. Employees, while in South Carolina, supervise or inspect installation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Employees, while in South Carolina, conduct training courses, seminars, or lectures two times per year. Note: Unless sales training.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Employees, while in South Carolina, provide engineering or design functions related to customized products.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Employees, while in South Carolina, handle customer complaints. Note: Facilitating communications between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer is a protected activity. See SC Revenue Ruling #97-15.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Employees, while in South Carolina, pick up defective merchandise.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Employees, while in South Carolina, pick up or replace damaged or returned property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Employees, while in South Carolina, provide shipping information and coordinate deliveries.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Employees, while in South Carolina, telecommute from their homes located in South Carolina and perform non-solicitation activities.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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	YES	NO
14. One employee telecommutes from his home located in South Carolina and performs back-office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. One employee telecommutes from his home located in South Carolina and performs product development functions such as computer coding.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Employees, while in South Carolina, assist the out-of-state corporation in defending a lawsuit (e.g., legal staff and witnesses) while in South Carolina for one to 30 days. Note: See SC Revenue Ruling #08-1 where the Department concluded that the use of the South Carolina court system by an out-of-state company sending various employees to South Carolina to assist its independent legal counsel in defending a lawsuit does not give the out-of-state company nexus with South Carolina. The law firm providing counsel is taxable in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Employees fly into South Carolina on a commercial airline for business purposes.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Employees, while in South Carolina, purchase raw material and inventory while in South Carolina for 20 or fewer days.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
19. Employees, while in South Carolina, attend seminars.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
20. Employees, while in South Carolina, attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for up to 14 consecutive days each year. During their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone, computer, etc. in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
21. Employees fly into South Carolina on a company plane to attend a seminar.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
22. Employees fly into South Carolina on a company plane to attend sports events as spectators.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
23. Employees, while in South Carolina, attend seminars or social functions while staying on a company yacht docked in waters in South Carolina for up to 14 days.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
24. Employees, while in South Carolina, hold job fairs, hiring events, or other recruiting activities for the out-of-state office. Note: Unless in the recruiting business.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 25. Employees, while in South Carolina, hire, supervise, or train other employees.
Note: Unless sales training. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

H. Activities of Unrelated Parties

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. Unrelated third parties located in South Carolina provide fulfillment services (<i>i.e.</i> , fill product orders from inventory owned by the out-of-state corporation). | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Unrelated third parties located in South Carolina collect regular or delinquent accounts.
Note: Assuming the collection is being done on behalf of the out-of-state company. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Unrelated third parties located in South Carolina investigate credit-worthiness of new customers.
Note: Assuming the investigation is done on behalf of the out-of-state company. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Unrelated third parties located in South Carolina repossess property one to six times a year.
Note: If not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Unrelated third parties located in South Carolina repair or provide maintenance, including warranty services, one to six times per year.
Note: If not <i>de minimis</i> and if conducted on behalf of the out-of-state company. Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Unrelated third parties located in South Carolina assist with the “set-up” or installation of the company’s products.
Note: If not <i>de minimis</i> and if conducted on behalf of the out-of-state company. Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Unrelated third parties located in South Carolina perform repairs under standard or extended warranty.
Note: If not <i>de minimis</i> and if conducted on behalf of the out-of-state company. Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. Unrelated third parties located in South Carolina close mortgage loans for an | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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out-of-state financial organization.

YES NO

9. Unrelated third parties located in South Carolina service mortgage and/or consumer loans for an out-of-state financial organization.

YES NO

I. Distribution and Delivery

YES NO

1. The out-of-state corporation ships products into South Carolina in returnable containers.
Note: Assuming the corporation asks for their return.

YES NO

2. The out-of-state corporation delivers goods into South Carolina (from a point outside South Carolina) to customers in the corporation's owned or leased vehicles.

YES NO

3. The out-of-state corporation picks up defective products or scrap materials in South Carolina in taxpayer-owned vehicles.

YES NO

4. The out-of-state corporation picks up raw materials in South Carolina in taxpayer-owned vehicles.

YES NO

Note: Assuming the pickup is not a back haul (*i.e.*, the out-of-state corporation picks up shipments at the destination or nearby location in South Carolina for delivery to another point).

5. The out-of-state corporation travels through South Carolina in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina.

YES NO

Note: SC Code Section 12-6-4920 for the filing requirements for interstate motor carriers.

6. The out-of-state corporation "back hauls" shipments in corporate-owned trucks.

YES NO

7. The out-of-state corporation holds title to electricity flowing through a transmission wire within South Carolina (the transmission neither originates nor terminates in South Carolina).

YES NO

Note: Assuming the corporation does not own or lease the transmission wire.

8. The out-of-state corporation holds title to natural gas flowing through a pipeline within South Carolina (the natural gas neither originates nor terminates in South Carolina).

YES NO

Note: Assuming the corporation does not own or lease the pipeline.

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J. Financial Activities/Transactions⁴

	YES	NO
1. The out-of-state corporation negotiates and obtains bank loans from a bank located in South Carolina. Officers of the corporation visit the bank at least twice a year to discuss business.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. The out-of-state corporation makes loans secured by real estate located in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The out-of-state corporation makes loans secured by tangible personal property in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The out-of-state corporation issues credit cards to residents of South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The out-of-state corporation purchases, via the secondary market, mortgage loans. A few of the debtors and some of the property securing the loans are located in South Carolina. The out-of-state corporation services the loans in SC.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. The out-of-state corporation is a passive investor who purchases, via the secondary market, credit account balances of residents of South Carolina. It does not service the credit accounts in SC.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. The out-of-state corporation makes personal loans to residents of South Carolina who traveled across the state-border to obtain the loans.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. The out-of-state corporation makes personal loans to out-of-state residents who over a number of years subsequently move to South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. The out-of-state corporation makes automobile loans to out-of-state residents who over a number of years subsequently move to South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. The out-of-state corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States. A few of the debtors and some of the property securing the loans are located in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. The out-of-state corporation forecloses on one parcel of real estate located in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. The out-of-state corporation forecloses on several parcels of real estate located in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁴ See SC Revenue Ruling #08-1 debt examples.

PUBLIC DRAFT

Circulated for Public Comments

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K. Transactions with South Carolina Printers⁵

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The out-of-state corporation leases tangible personal property located at a printer in South Carolina for use in connection with a printing contract. Once the work is complete, the printer ships the printed material out of South Carolina for addressing and mailing. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The out-of-state corporation owns raw materials at a South Carolina printer. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The out-of-state corporation visits South Carolina printers for quality control purposes one to six times per year. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

L. Cloud Computing or Software as a Service (SaaS) Transactions⁶

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The out-of-state corporation provides access to its software to South Carolina customers and pays independent contractors to perform configuration/set-up services in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation provides access to its software to South Carolina customers and has employees solicit business in South Carolina and the sale is <u>not</u> one of tangible property protected under Public Law 86-272. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but has a substantial number of customers with billing addresses in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but earns a substantial amount of revenue from customers in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

M. Internet-Based Activities

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The out-of-state corporation owns an internet server located in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation owns an internet server located in South Carolina and hires third-party technicians located in South Carolina to keep the server functioning. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

⁵See SC Code Section 12-6-555.

⁶The following questions assume an out-of-state corporation provides access to software to customers in South Carolina via a third party's cloud infrastructure. The customers pay a fee in return for a license to use the software.